

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

THE PROCTER & GAMBLE COMPANY,	:	
	:	Case No. 1:02cv393
Plaintiff/Counterclaim	:	
Defendant,	:	
vs.	:	District Judge Walter Herbert Rice
		Magistrate Judge Sharon L. Ovington
THE COCA-COLA COMPANY,	:	
Defendant/Counterclaim	:	
Plaintiff.	:	

DISCOVERY ORDER

This matter is before the Court upon motion of Plaintiff, the Procter & Gamble Company's ("P&G") motion to strike the supplemental expert report of Dana Krueger (Doc. #59), Defendant, The Coca-Cola Company's ("Coca-Cola") Motion to Expedite Consideration of its opposition to P&G's Motion to Strike (Doc. #60) and Coca-Cola's Memorandum in Opposition to P&G's Motion to Strike (Doc. # 61).

A telephone conference was held on December 19, 2003, wherein this Judicial Officer advised the parties orally of the Court's ruling on the pending motions and the reasons for same. Based upon all of the facts and circumstances presented, and for the reasons stated in the telephone conference, the Court declines to strike the supplemental expert report of Dana

Krueger or to strike those portions of Dr. Wihelmsen's rebuttal report. P&G's request for an extension of time to submit expert report in rebuttal is granted.

This Judicial Officer finds that the failure to timely disclose the supplemental expert report was substantially justified and/or harmless and therefore the imposition of sanctions is not warranted. Accordingly, P&G's motion to strike the supplemental expert report of Dana Krueger (Doc. #59) is OVERRULED. Defendant, Coca-Cola's Motion to Expedite Consideration of its opposition to P&G's Motion to Strike (Doc. #60) is OVERRULED as moot in light of the December 19, 2003 telephone conference which resolved the aforementioned discovery issues.

March 3, 2004

s/ Sharon L. Ovington

Sharon L. Ovington
United States Magistrate Judge